

Form 2635, in duplicate. Both copies of the claim shall be filed with the regional director (compliance) for the region in which the factory is located. The claim shall specify the quantities of tobacco products on which claim is made and the tax liability in respect thereof, and shall set forth the circumstances surrounding the shortage and the reason the manufacturer believes tax is not due or payable. The regional director (compliance) will, after such investigation as he deems appropriate, allow the claim to the extent he is satisfied the shortage was due to operating losses such as damage during grading, sorting, or packaging, and was not caused by theft or other unlawful or improper removal. Upon action on the claim by the regional director (compliance) he will return the copy of Form 2635 to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1414, as amended, 1417, 1419, as amended; 26 U.S.C. 5701, 5703, 5705)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### TOBACCO PRODUCTS LOST OR DESTROYED

##### § 40.301 Action by claimant.

Where tobacco products are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file a claim for the tax on such products under the provisions of § 40.282 or § 40.283, he shall indicate on the claim the nature, date, place, and extent of such loss or destruction. The claim shall be accompanied by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

#### TOBACCO PRODUCTS WITHDRAWN FROM THE MARKET

##### § 40.311 Action by claimant.

(a) *General.* Where tobacco products are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 40.282 or § 40.283, he shall assemble the products in or adjacent to a factory if they are to be returned to bond or at any suitable place if they are to be destroyed or reduced to materials. The manufacturer shall group the products according to the rates of tax applicable to the products, and shall prepare a schedule of the products, on ATF Form 5200.7, in triplicate. All copies of the schedule shall be forwarded to the regional director (compliance) for the region in which the products are assembled.

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax paid on that brand and size of cigar during the required record retention period (see § 40.185), except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the manufacturer must include a certification on either Form 5200.7 or Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.

(See 26 U.S.C. 5705)

[T.D. ATF-80, 46 FR 18310, Mar. 24, 1981, as amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-307, 55 FR 52743, Dec. 21, 1990; T.D. ATF-424, 64 FR 71932, Dec. 22, 1999; T.D. ATF-420, 64 FR 71941, Dec. 22, 1999]

##### § 40.312 Action by regional director (compliance).

Upon receipt of a schedule of tobacco products withdrawn from the market, the regional director (compliance) may assign an ATF officer to verify the schedule and supervise disposition of

#### § 40.313

the tobacco products (and destruction of the stamps, if any), or he may authorize the manufacturer to dispose of the products (and destroy the stamps, if any) without supervision by so stating on the original and one copy of the schedule returned to the manufacturer.

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### § 40.313 Disposition of tobacco products and schedule.

When so authorized, as evidenced by the regional director's (compliance) statement on the schedule, the manufacturer shall dispose of the tobacco products (and destroy the stamps, if any) as specified in the schedule. After the manufacturer has disposed of the products (and destroyed the stamps, if any), he shall execute a certificate on both copies of the schedule returned to him by the regional director (compliance), to show the disposition and the date of disposition of the products (and stamps, if any). In connection with a claim for allowance the manufacturer then shall return the original of the schedule to the regional director (compliance) who authorized such disposition, who will cause such schedule to be associated with the claim, Form 2635 (5620.8), filed under § 40.282. In connection with a claim for credit or refund the manufacturer shall attach the original of the schedule to his claim for credit, Form 2635 (5620.8), or claim for refund, Form 2635 (5620.8), filed under § 40.283. When an ATF officer is assigned to verify the schedule and supervise disposition of the tobacco products, such officer shall, upon completion of his assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the products. In connection with a claim for allowance the officer shall return one copy of the schedule to be included in the manufacturers records, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to the

#### 27 CFR Ch. I (4-1-03 Edition)

claim, Form 2635 (5620.8), filed under § 40.283.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

### Subpart J—Suspension and Discontinuance of Operations by Manufacturers

#### § 40.331 Discontinuance of operations.

Every manufacturer of tobacco products who desires to discontinue operations under this part shall dispose of all tobacco products on hand, in accordance with this part, and make a concluding inventory and concluding report in accordance with the provisions of § 40.201 and § 40.202, respectively. The manufacturer shall surrender his permit, with such inventory and report, to the regional director (compliance) as notice of such discontinuance. The regional director (compliance) may then terminate the liability of the surety on the bond of the manufacturer.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

[T.D. 6871, 37 FR 40, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### § 40.332 Suspension and revocation of permit.

Where the regional director (compliance) has reason to believe that a manufacturer of tobacco products has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or has failed to maintain his premises in such manner as to protect the revenue, the regional director (compliance) shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued